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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/120,422	07/22/98	SANTELLI	A 4297-10405

Handwritten signature

PM92/1101

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EXAMINER

MAH, C

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 11/01/99

Handwritten number 10

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/120,422

Applicant(s)

Santelli Jr

Examiner

Chuck Mah

Group Art Unit

3626



☒ Responsive to communication(s) filed on Sep 28, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 5-9 and 12-15 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 5-9 and 12-15 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Claims 12-15 and 5-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, lines 5-6, "at least one element of a tongue and groove...mates with the at least one element" is vague and indefinite because it includes a tongue-to-tongue or groove-to-groove arrangement which is not disclosed in the invention. Note similar errors in claim 15 lines 3-4.

2. Claims 12, 13, 15, 5, 6, and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Francis, Jr. et al '132.

3. Claims 14, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Francis, Jr. et al. '132.

'132 discloses the invention as claimed but for the location of the groove being on the flexible section and the location of the tongue being on the rigid section. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the tongue on the rigid section and groove on the flexible section, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

As to claim 7, it would have been an obvious matter of design choice to make the hinge of '132 with the rigid extending from a side of the flexible section or whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level

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of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

4. Applicant's arguments filed Sep. 28, 1999 have been fully considered but they are not persuasive.

Applicant's primary argument is based on coextrusion processes forming the apparatus rather than unobvious structure of the apparatus itself. However, as clearly stated in MPEP 2113, "The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In this case, '132 clearly shows rigid sections (21, 22) and a flexible section (23) having a tongue (31, 32).

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Mah whose telephone number is (703) 308-0676. The examiner can normally be reached on Monday-Thursday from 8:30 AM to 6:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight, can be reached on (703) 308-3179. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597(8).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.


Chuck Mah
Primary Examiner

CM

October 27, 1999